

EPA to Propose Splitting 500-Million-Gal RFS Remand in 2021, 2022: Sources

EPA is expected to propose as early as next month a 250-million-gal increase in the 2021 Renewable Volume Obligation (RVO) and another 250-million-gal boost in the 2022 RVO to comply with a remand order the U.S. Court of Appeals for the District of Columbia Circuit issued nearly three years ago, according to several sources familiar with the agency's plans.

Sources said EPA will likely propose adding the first 250-million-gal increase through a "supplemental RVO" and will follow that with an identical boost in 2022.

The agency submitted its proposed 2021 Renewable Fuel Standard (RFS) targets to the White House Office of Management and Budget (OMB) for review on May 13. OMB review typically takes 30 days to complete, and EPA has traditionally published its proposals within six to eight weeks of sending them to OMB, meaning the agency is likely to make the proposed blending targets public sometime in the first two weeks of July.

The D.C. Circuit in a July 2017 ruling found that EPA erred when it broadened the RFS definition of inadequate domestic supply of biofuels to include "real-world constraints," including the E10 blendwall and the market's ability to consume increasing volumes of renewable fuels to justify cuts to the 2014-2016 RVO below levels set by Congress.

In releasing its draft 2020 RVO last summer, EPA, however, said it did not plan to increase the annual blending targets to account for the court's ruling, saying such a retroactive adjustment would be "unduly burdensome and inappropriate" and would do little to encourage additional biofuels production. The more likely result of such a step, it added, would be a drawdown on the number of banked Renewable Identification Number (RIN) credits, a step it characterized as inappropriate.

But the agency appeared to change its mind when it issued the final 2020 RVO in December, saying then that it intended to address the remand in a "separate action" that it planned to issue early this year, citing the number of comments it received on the issue. EPA has yet to detail that action as the midpoint of 2020 approaches.

The biofuels industry has been urging EPA for years to make good on the 2017 court ruling.

Renewable Fuels Association (RFA) President and CEO Geoff Cooper has repeatedly pressed EPA to increase RVOs by 500 million RINs to comply with the court's ruling. RFA Chief Economist Scott Richman urged EPA in public testimony last summer on the proposed 2020 RVO to either increase this year's blending target by 500 million gal or spread the requirement across the 2020 and 2021 compliance years.

"EPA has also thumbed its nose at the DC Circuit, which ruled that EPA must address the illegal waiver of 500 million gallons in the 2014-2016 RVO," Growth Energy Vice President of Regulatory Affairs Chris Biley said in testimony he presented on the proposed 2020 RVO. "We've waited for two years and what has EPA done to address those lost gallons? Absolutely nothing, saying that it is too difficult."

Should EPA decide to add the remanded gallons to the 2021 and 2022 RVOs, values for D6 ethanol RINs may head higher. Such an increase, according to one RIN trader, could lead to a "pop" in RIN credit prices.

"If you tell refiners they're finally going to be on the hook for those 500 million RINs, I'd definitely expect to see more buying," he said. "Maybe even a jump in prices."

Ethanol-related D6 RINs values in early June topped 50cts for the first time since March 2018 when the Trump administration approved a record number of small-refinery exemption (SRE) requests that for a time pushed credit prices below the 10ct mark.

Values have recovered steadily this year since the 10th U.S. Circuit Court of Appeals in January ruled that the agency exceeded its authority when it granted three SREs for the 2016 and 2017 RFS compliance years and improperly considered factors other than the cost of RFS compliance when it was determining whether the refiners were suffering disproportionate economic hardship. The agency has yet to say whether it will apply the 10th Circuit's ruling nationwide.

"The agency has ignored this issue for long enough," Advanced Biofuels Association (ABFA) President Mike McAdams said. "Responding to the federal court's direction from 2016 to offset what occurred to the tune of 500 million RINs is totally justifiable. Every little bit helps for our industry."

Iowa Renewable Fuels Association (IRFA) Executive Director Monte Shaw said Monday he wants to see the fine print of any plan by EPA to make good on the court's remand.

"We've never demanded it, but any notion that you couldn't do this in one year is a little bit silly considering they're sitting on over a billion RINs in the piggybank, which the 10th Circuit Court ruled shouldn't be there," Shaw said. "Enforcing the court ruling is great, but it won't be meaningful if they continue to skirt the law of the RFS with new provisions. You've got to look at the overall picture."

--Reporting by Jordan Godwin, jgodwin@opisnet.com; Editing by Jeff Barber, jbarber@opisnet.com

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